IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

FIRST APPEAL NO. 517 OF 1986
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Dattatraya Y. Sarmalkar,
Residing at Mahatma Gandhi Road,
Goregaon, at Pahadi Goregaon,
Bombay - 400 062 ..Appellant
(Orig. Defendant)

V/s

Eastern Ceramics Ltd.,
having its registered office
at Mahatma Gandhi Road,
Goregaon (West), Mumbai-400 062 .. Respondent
(Orig.Plaintiff)

FIRST APPEAL NO. 518 OF 1986

1. M/s Tip Top Stores, carrying on business at Shop Nos. 1 and 2 in the property bearing Municipal Ward No. P 404 (1), Street No.315, Swami Vivekand Road, Goregaon (West), Bombay - 400 062

2. Palan Khetshi Shah, Proprietor and/or Partner of Defendant No.1 and having his address as Shop Nos. 1 and 2, 315, Swami Vivekanand Road, Goregaon (West), Bombay - 400 062 ..Appellants.
(Orig.Defendants)

V/s

Eastern Ceramics Ltd., A Public Ltd. Company registered under the Companies Act, 1956 and having their registered office at Mahatma Gandhi Road, Goregaon (West), Bombay -400 062 ..Respondents.
(Orig. Plaintiff)

FIRST APPEAL NO. 519 OF 1986

M/s West End Dry Clearners
carrying on business at
shop No.3 in the property
bearing Municipal Ward No. P-404(1)
Street No. 315, Swami Vivekanand
Road, Goregaon (West),
Bombay -400 062 .. Appellant
(Orig. Defendant)

V/s

Eastern Ceramics, a Public
Limited Company registered under
the Companies Act, 1956 having
their registered office at
Mahatma Gandhi Road, Goregaon (West)
Bombay- 400 062 ..Respondent.
(Orig. Plaintiff)

Ms R.C. Nichani, Advocate for the appellants.

Shri Omkar Geedh, Advocate for the respondent.

CORAM : K.J. ROHEE, J.
DATE : 3RD APRIL, 2006

COMMON JUDGMENT

. These three appeals have been preferred by the original defendants against three judgments and decrees passed by the Judge, City Civil Court, Bombay in Short Cause Suit Nos. 2176/1974, 2797/1976 and 2795/1976 respectively, passed on 27th June, 1986.

2. The respondent/plaintiff (hereinafter referred to as the "plaintiff") instituted separate Short Cause Suits against 3 different appellants/defendants (hereinafter referred to as the "defendants") for declaration that they are tresspassers in respect of the suit premises belonging to the plaintiff; that they are liable to be evicted from the suit premises; that the plaintiff is entitled to the possession of the suit premises.

3. The case of the plaintiff in brief is that it purchased 15 Acres of land out of survey No. 161, area 563 A 22 G of village Pahadi, Taluka South Salestte (Bandra), Bombay from M/s Byramjee Jeejeebhoy & Company by a deed of conveyance dated 12/9/1962. The plaintiff was placed in possession of the said land. Thereafter the plaintiff started developing the land for erection of its factory. However, the appellants/defendants encroached upon the said land and errected temporary structures thereon unlawfully. The appellants/defendants are rank trespassers and are liable to be evicted from the suit land.

4. According to the defendant in Short Cause Suit

NO. 2176/1974 he is in possession of land admeasuring 1896 sq. yards since before 1952. He is in occupation of the said land openly, peacefully and uninterruptedly for about 12 years prior to filing of the suit and to the knowledge of the original owner. Thus he has become owner of the suit land by adverse possession. Hence the plaintiff is not entitled to the relief of possession.

5. Alternatively the defendant submitted that the original owner viz. M/s Byramjee Jeejeebhoy & Company let 24 gunthas of land to the father of the defendant and subsequently he continued to occupy the same as a tenant. Thus he is not liable to be evicted.

6. According to the defendants in Short Cause Suit No. 2796/1976 the suit structure was given to them by Shri D.Y. Sarmalkar (Defendant in S.C.Suit NO. 2176/1974) on rental basis. The defendants are paying rent in respect of the suit structures to D.Y. Sarmalkar and rent receipts are also issued to them. According to the defendants before occupying the suit premises they satisfied themselves about the ownership of Shri D.Y. Sarmalkar. Thus, they are not liable to be evicted.

7. According to the defendant in Short Cause Suit No. 2795/1976 he is in occupation of the suit land admeasuring 1096 sq. yards since 1952 and he is paying rent in respect of the suit premises to M/s Byramjee Jeejeebhoy & Company who were the owners of the said land. At one stage in the written statement the defendant also set up a plea that he is the owner of the said structure and is not liable to be evicted.

8. On the basis of the above pleadings of the parties the learned trial Judge framed issues on 12/3/1984. Subsequently, additional issues were framed by the trial Court on 10/9/1985.

9. All the three suits were tried together. Common evidence was recorded. However, separate judgments were delivered by the learned trial Judge on considering oral and documentary evidence. The trial Court held that the plaintiff succeed in proving that the defendants were trespassers in the suit premises and that the defendants failed to prove that they perfected their title to the suit premises by adverse possession. Consequently the learned trial Judge decreed all the three suits as

stated earlier. The defendants have challenged the said judgments and decrees.

10. I have heard Ms. R.C. Nichani, Advocate for the appellants/defendants and Shri Omkar Geedh, Advocate for the responent/plaintiff. I have also gone through the record and proceedings of the suits with the able assistance of the learned Counsel for the parties.

11. Ms. Nichani, the learned Counsel for the appellants/defendants, while assailing the impugned judgments, pointed out that the learned trial Judge considered only the issues framed on 12/3/1984 and did not at all consider additional issues framed on 10/9/1985. Thus, the judgments in question are incomplete and they cannot be sustained.

12. Shri Omkar Geedh, the learned Counsel for the respondent/plaintiff, could not contradict these submissions.

13. It is apparent that the learned trial Judge has not at all taken into consideration the additional issues framed by it and proceeded to consider certain

issues only. Thus, it cannot be said that the learned trial Judge has properly applied his mind to the dispute before him. In view of this, without entering into the merits, the impugned judgments and decrees cannot be sustained and will have to be set aside. The said matters will have to be remanded back to the trial Court for considering all the issues including additional issues. Hence, the order.

(i) The appeals are allowed.

(ii) The judgments and decrees of the trial Court are set aside. All the three suits are remanded back to the trial Court for decision on all the issues including additional issues, according to law, within 6 months from the date of receipt of the writ.

[K.J. ROHEE, J.]